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No. 82-1889

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Petitioners,

v.

MADELIN H. KNOLL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF OF RESPONDENT IN OPPOSITION

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COUNTER-STATEMENT OF QUESTION PRESENTED

Did the court of appeals err in holding that Pennsylvania's six-month statute of limitations for actions against public officials should not be applied in an employment discrimination action against a school district under 42 U.S.C. § 1983, where such an action against a private employer would be governed by the state's six-year statute of limitations?

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BRIEF OF RESPONDENT IN OPPOSITION

SUMMARY OF ARGUMENT

1. Contrary to petitioners' contention, there is no irreconcilable conflict between the decision in this case and decisions of the First and Eighth Circuits. The Eighth Circuit has not addressed the question whether the application of a six-month statute of limitations to a civil rights claim is inconsistent with federal policy. To the extent that the First Circuit has addressed the question, its decisions have turned on the peculiarities of the particular state statutes involved, and present no true conflict with the decision below.

2. The question on which review is sought has rarely arisen, and this case does not present any of the questions pertaining to statutes of limitations for federal civil rights claims that have recurred with frequency in the federal courts. The question presented here would, at

best, warrant review only in a case presenting those other issues of more general importance.

3. The decision of the court of appeals is interlocutory, and the question presented may have no impact on the outcome of this litigation. That question only involves respondent's claims under § 1983, and does not affect her claims under Title VII. Respondent may ultimately obtain under Title VII all the relief to which she would be entitled under § 1983. The case will in any event be the subject of further proceedings in the district court, and were plaintiff eventually to obtain independent relief under § 1983, any issue warranting review could be presented to this Court at that time.

For these reasons, the petition for certiorari should be denied.

ARGUMENT

The question petitioners ask this Court to review involves no square conflict among the circuits, presents no issue of general importance, and quite possibly will have no impact on the ultimate outcome of this litigation. The petition for certiorari should therefore be denied.

1. Petitioners assert that the decision in this case conflicts with decisions of the First and Eighth Circuits "as to whether six-month statutes of limitations may, consistent with federal policy, be applied to federal civil rights actions" (Pet. at 8-11). But in fact, the cases present no irreconcilable conflict.

a) In the Eighth Circuit cases cited by petitioners, the only issue addressed by the court was the question of which state cause of action was "most closely analogous" to the plaintiff's federal claim. *Warren* v. *Norman Realty Co.*, 513 F.2d 730, 733-734 (1974), *cert. denied*, 423 U.S. 855 (1975); *Green* v. *Ten Eyck*, 572 F.2d 1233, 1237-1238 (1978). In both cases the state cause of action found to be "most analogous" was governed by a six-month statute of limitations, and the court applied that

limitations period. But there is no indication in either case that the six-month limitations period was challenged as inconsistent with federal policy, and in neither case did the court address that issue.

b) In certain of the First Circuit cases cited by petitioners—unlike the Eighth Circuit cases—federal policy was one of the factors considered by the court in determining which statute of limitations to apply. But the First Circuit's decision to apply a six-month limitations period in those cases, and the Third Circuit's decision to reject such a limitations period in this case, ultimately turn on differences in the particular state statutes involved, rather than on any irreconcilable conflict as to the applicable principles of federal law.

(1) The First Circuit decision upon which petitioners principally rely is *Burns* v. *Sullivan*, 619 F.2d 99, *cert. denied*, 449 U.S. 893 (1980). The plaintiff in *Burns* claimed racial discrimination in employment, and Massachusetts provided an administrative remedy for that precise type of claim, with a six-month limitations period. In holding that the six-month limitations period applicable to the state administrative procedure was not too short to be applied to the identical claim asserted in fedcourt, the First Circuit relied in two critical respects on teh fact that the limitations period was part of a state administrative remedy. First, the court suggested (without deciding) that the plaintiff might be required to exhaust that state remedy.[1] If so, the plaintiff's administrative claim would in any event have had to be filed within six months, and the court concluded that no added burden —and thus no interference with any federal policy— would result from applying the same limitations period to a subsequent court action. See 619 F.2d at 106-107. Second, the court reasoned that if exhaustion were *not* legally required, federal policy would nonetheless favor application of the six-month limitations period, because a

[1] *Burns*, of course, preceded this Court's decision in *Patsy* v. *Board of Regents*, —— U.S. ——, 102 S. Ct. 2557 (1982).

longer period would encourage plaintiffs to "bide their time and use the federal courts, bypassing the state administrative proceedings" (*id.* at 107)—a result which would weaken the "ability of the state to resolve its own personnel problems." *Ibid.*

In a subsequent case cited by petitioners, *Carter* v. *Supermarkets General Corp.*, 684 F.2d 187, 190 (1982), the First Circuit emphasized that its decision in *Burns* was based on a policy of "preventing employees from foregoing state administrative proceedings in favor of a later federal court action." And in *Holden* v. *Massachusetts Comm'n Against Discrimination*, 671 F.2d 30, 33 n.3 (1981), *cert. denied*, —— U.S. ——, 103 S.Ct. 97 (1982), the court reiterated: "Our concern in *Burns* was that if federal claims enjoyed longer limitations periods than state claims, plaintiffs would bypass state administrative remedies. . . ."[2]

Thus, the existence of a state administrative procedure containing a six-month statute of limitations was central to the First Circuit's conclusion that that limitations period could properly be applied to the federal claims presented in *Burns* and its progeny.[3] Inasmuch as the six-month Pennsylvania statute at issue in the instant case is not part of any administrative remedy, the considerations which so persuaded the First Circuit are absent here.

(2) By the same token, the Third Circuit relied in *this* case on a feature unique to the Pennsylvania statutes,

[2] In *Holden*, the court nevertheless applied a six-month limitations period in a case where an administrative remedy was not available; but the court did so in large part because of its reluctance, after *Burns*, "to give [the plaintiff] a longer limitations period than that available to other public employees in Massachusetts [asserting the same type of claim]." *Id.* at 33.

[3] The other First Circuit cases cited by petitioners contain no independent analysis of these issues. See *Hussey* v. *Sullivan*, 651 F.2d 74 (1981); *Dewey* v. *University of New Hampshire*, 694 F.2d 1 (1982).

which did not arise in *Burns*. The Third Circuit noted that if the claim in this case were asserted against a private employer, Pennsylvania's six-*year* statute of limitations would unquestionably apply; and the court relied heavily on that fact in declining to apply the six-*month* statute to this suit against a public employer. Pet. App. A-12 to A-14. In contrast, the Massachusetts statutes at issue in *Burns* "d[id] not . . . make a public-private distinction" (*Carter*, *supra*, 684 F.2d at 190), and the First Circuit cases applying a six-month statute have applied that statute to *all* employees, public and private. See *Carter*, *supra*; *Holden*, *supra*.[4] Thus, just as the First Circuit's decision in *Burns* turned on considerations not present in this case, the Third Circuit's decision here turned on considerations not present in *Burns*.

In sum, there is no irreconcilable conflict between the decision in this case and the decisions of the other circuits upon which petitioners rely. And even if a conflict could be discerned, it would remain the case that the decisions in question depend to such an extent on the peculiarities of the respective state statutes that no federal question of general importance is presented here.[5]

[4] Indeed, in *Holden* the First Circuit expresaly noted its reluctance to apply different limitations periods to plaintiffs asserting similar substantive claims. See note 2, *supra*. Thus, it is far from clear that the First Circuit, even in a case such as *Burns*, would sanction the application of a six-month limitations period to suits by public employees where, as here, a limitations period twelve times as long applies to suits by private employees.

[5] There is certainly no need for the Court to take this case in order to expound the basic principles that govern the application of state statutes of limitations to suits under § 1983. As petitioners acknowledge, those principles were fully articulated in *Board of Regents* v. *Tomanio*, 446 U.S. 478 (1980). For the reasons discussed in text, the question whether the court of appeals correctly applied the teaching of *Tomanio* to the particular state statutes at issue here does not warrant review.

2. Contrary to the suggestion in the Brief of the State of Maryland as Amicus Curiae in Support of the Petition for a Writ of Certiorari, at pp. 12-13, this case does *not* present any issue concerning the question of what state causes of action are "most clearly analogous," for limitations purposes, to federal civil rights claims. As the cases cited by Maryland indicate, the decisions of the lower courts are in disarray with respect to such questions as whether a civil rights claim should be analogized to a tort, or to some other cause of action,[6] and whether a limitations period applicable to a state *administrative* proceeding may appropriately be applied to a federal suit.[7]

The petition in this case does not present those recurring issues.[8] If the issue presented in this case were to arise in a case that presents those additional questions of more general importance, it might in that context warrant review. *This* case, presenting one narrow issue that has rarely arisen,[9] does not.

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[6] See, *e.g.*, *Garmon* v. *Foust*, 668 F.2d 400, 403-405 (8th Cir.), *cert. denied*, —— U.S. ——, 102 S. Ct. 2283 (1982); *Warren* v. *Norman Realty Co.*, *supra*, 513 F.2d at 733-734.

[7] See, *e.g.*, *McNutt* v. *Duke Precision Dental and Orthodontic Laboratories*, 698 F.2d 676, 678 (4th Cir. 1983) (noting conflict among the circuits on that issue).

[8] Maryland erroneously asserts that the Third Circuit's reasoning in this case conflicts with the reasoning of the aforementioned cases (Maryland Br. at 12-13). But as Maryland's own description of the cases indicates, those cases rejected a short limitations period on the ground that it was not the "most clearly analogous" state statute, and the courts therefore had no occasion to address—and did not address—the separate question whether such a limitations period would be too short as a matter of federal policy.

[9] Petitioners assert that at least 33 states have statutes of limitations of less than one year which "arguably" could be applied to civil rights actions. Petition, p. 11, n.13. However, with the sole exception of Indiana Code Ann. § 34-4-16.5-7, the statutes of each of those states are distinguishable from the Pennsylvania statute at issue here in that they are not limited to suits against the government. See p. 5 *supra*. And, petitioners make no showing that the question presented here (even if couched in the broad terms used by petitioners) has arisen with any frequency.

3. Finally, certiorari should be denied because the decision of the court of appeals is interlocutory. See, *e.g.*, *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327 (1967); R. Stern and E. Gressman, *Supreme Court Practice*, 300 (5th ed. 1978). It is far from clear that the Third Circuit's ruling with respect to the timeliness of respondent's claim under 42 U.S.C. § 1983 will have any ultimate impact on the outcome of this litigation. The court held that respondent's claim under Title VII may also be timely (Pet. App. A-15 - A-18), and petitioners do not seek review of that holding. It is therefore quite possible that plaintiff will receive under Title VII all the relief to which she would be entitled under § 1983. The case must in any event be the subject of further proceedings in the district court, and any question warranting review could be presented at the conclusion of those proceedings.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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